

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>TYRONE WOODEN</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>FUNK MFG./DEERE &amp; COMPANY</b>	)	
Respondent	)	Docket No. <b>1,040,723</b>
	)	
AND	)	
	)	
<b>NEW HAMPSHIRE INDEMNITY CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent requests review of the July 28, 2008 preliminary hearing Order entered by Administrative Law Judge Thomas Klein.

**ISSUES**

The claimant alleged he suffered bilateral upper extremity injuries while working for the respondent. Respondent denied that claimant's diagnosed bilateral carpal tunnel syndrome arose out of and in the course of his employment.

The Administrative Law Judge (ALJ) entered an Order requiring respondent to provide a list of three physicians from which the claimant could choose an authorized treating physician. The ALJ further ordered respondent to pay designated medical bills as well as reimburse \$375 to claimant's counsel for Dr. Flutter's examination as unauthorized medical. Finally, the ALJ ordered payment of temporary total disability compensation if claimant was taken off work by the selected authorized treating physician.

Although the ALJ made no factual findings, nor any analysis of the issues, K.S.A. 44-534a(2) provides that upon a preliminary finding that a claim is compensable an ALJ may make a preliminary award of medical compensation. Consequently, it is implicit in the ALJ's order that the underlying compensability issue of injury arising out of and in the course of employment was determined in claimant's favor.

Respondent requests review of whether the claimant's accidental injury arose out of and in the course of employment. Respondent argues that claimant only performed the alleged repetitive work for less than a month and the onset of symptoms was followed a

day later by a diagnosis of moderate to severe bilateral carpal tunnel syndrome. Consequently, respondent further argues that claimant could not have developed moderate to severe bilateral carpal tunnel syndrome performing a job for less than a month. Respondent also argues claimant's credibility is suspect because he answered no to a pre-employment question regarding prior back problems when in fact he had suffered two prior back injuries.

Conversely, claimant notes that he worked at the repetitive job painting gears for nine and one-half weeks and before that he had performed work as a machinist while in training for that job. Consequently, claimant argues that respondent's brief contains a misstatement of facts as claimant worked the processing job painting gears for nine and one-half weeks before developing and reporting the bilateral upper extremity symptoms. Claimant further argues that there is medical evidence that his bilateral carpal tunnel syndrome was caused or aggravated by his work for respondent. Claimant requests the Board to affirm the ALJ's Order.

The sole issue raised on this appeal from a preliminary hearing is whether claimant met his burden of proof to establish that he suffered accidental injury arising out of and in the course of his employment.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Tyrone Wooden began working full-time as a machinist trainee for respondent on February 12, 2008. He spent half his work day in the class room and the other half working with machines. Although he completed the training it was determined that he could not successfully perform a machinist job. On March 24, 2008, he was then moved to a processing work position for respondent. Wooden explained his job duties:

Q. Okay. I need you to go into more detail. I don't want to be here all day, Mr. Wooden, but you need to explain to the Court what you do as a processor.

A. Okay, I spray the part; it's on a wheel and you turn it and I constantly grip -- I spray with a spray gun and I constantly grip the gun and I spray in one direction in one hand and I spray in the other direction with the other hand; and I have to clean the part, have to scrape the excess parts -- excess paint off the part of the tooling and just continue painting. And I paint -- I mean it's an all day process, and I paint from -- sometimes we go from -- it take takes one to two -- two to four minutes to paint a part; it depends on what part -- what part that I'm painting.<sup>1</sup>

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<sup>1</sup> P.H. Trans. at 10-11.

Wooden also testified he used a scraper in a circular motion in order to remove the excess paint off of parts that weighed 15-20 pounds. He would also have to lift the parts onto a jig and then remove it. These duties involved repetitive gripping, grasping and twisting of his wrists. Wooden worked third shift which began at 10:30 p.m. and ended at 7 a.m.

After Wooden had completed his shift, the morning of May 28, 2008, he got some sleep and then when he awoke he noticed pain and numbness in both hands. The numbness and tingling improved and he went to work that night. As he was spray painting a part he felt a pop in his left hand. Wooden also began to have pain and numbness in both hands so he notified his supervisor. He was advised to seek medical treatment at Coffeyville Regional Medical Center. The emergency room physician diagnosed claimant as having bilateral carpal tunnel syndrome. Wooden was taken off work and he was advised to follow-up in one day with a workers compensation physician.

Wooden provided the emergency room Return to Work Status Report to a supervisor. Respondent then referred him to their company physician, Dr. Paul Sandhu, for evaluation and treatment on May 30, 2008. Respondent had already made arrangements for Wooden to be reassigned to office work.

The history taken by Dr. Sandhu indicated Wooden had done office work for three months. An EMG was performed which revealed moderate to severe carpal tunnel syndrome. Although Dr. Sandhu scheduled Wooden for surgery the respondent did not authorize it. A Medical Treatment and Work Status Summary apparently completed by Dr. Sandhu contained a handwritten notation "Not work related at John Deere."<sup>2</sup>

At claimant's attorney's request, Dr. George Fluter examined and evaluated Wooden on June 12, 2008. The doctor diagnosed Wooden as having bilateral carpal tunnel syndrome with De Quervain's tenosynovitis. Dr. Fluter opined there was a causal/contributory relationship between Wooden's condition and his repetitive work activities for respondent.

Claimant testified he did not have any pain, numbness or tendonitis in either hand prior to working for respondent.

The underlying premise relied upon by respondent is that Wooden only worked the repetitive job spray painting gears for less than one month. And that while in training he had just done classroom work. That is simply not an accurate recitation of the evidentiary record. Both Wooden's testimony and the testimony from Mr. Kerns, respondent's Director of Safety and Health, established that Wooden performed the job spray painting for nine

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<sup>2</sup> P.H. Trans., Cl. Ex. 2.

and one-half weeks. Moreover, he had operated machines at least half days while in training to be a machine operator before he was assigned to the spray painting position.

Wooden performed hand intensive work for respondent and Dr. Flutter opined that activity either caused or contributed to his bilateral carpal tunnel syndrome. Claimant has met his burden of proof to establish that he suffered accidental injury arising out of and in the course of his employment.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>3</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>4</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge Thomas Klein dated July 28, 2008, is affirmed.

**IT IS SO ORDERED.**

Dated this 30th day of September 2008.

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HONORABLE DAVID A. SHUFELT  
BOARD MEMBER

c: Charles W. Hess, Attorney for Claimant  
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier  
Thomas Klein, Administrative Law Judge

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<sup>3</sup> K.S.A. 44-534a.

<sup>4</sup> K.S.A. 2007 Supp. 44-555c(k).